

The Gazette of India

EXTRAORDINARY
PART II—Section 2
PUBLISHED BY AUTHORITY

No. 29] NEW DELHI, TUESDAY, AUGUST 21, 1962/SRAVANA 30, 1884

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 21st August, 1962:—

BILL No XIII OF 1962

A bill further to amend the Indian Sale of Goods Act, 1930.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Indian Sale of Goods (Amendment) Act, 1962. Short title.

2. In section 1 of the Indian Sale of Goods Act, 1930 (hereinafter referred to as the principal Act), in sub-section (1), the word "Indian" shall be omitted. Amendment of section 1.

3. In section 13 of the principal Act, in sub-section (2), the words "or where the contract is for specific goods the property in which has passed to the buyer," shall be omitted. Amendment of section 13.

4. In section 25 of the principal Act, for sub-sections (2) and (3), the following sub-sections shall be substituted, namely:— Amendment of section 25.

'(2) Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal.

(3) Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the case may be, the railway receipt,

to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange; and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

Explanation.—In this section, the expressions “railway” and “railway administration” shall have the meanings respectively assigned to them under the Indian Railways Act, 1890.’

9 of 1890

Substitution
of new sec-
tion for sec-
tion 64A.

5. For section 64A of the principal Act, the following section shall be substituted, namely:—

In contracts
of sale,
amount of
increased or
decreased
taxes to be
added or
deducted.

“64A. (1) Unless a different intention appears from the terms of the contract, in the event of any tax of the nature described in sub-section (2) being imposed, increased, decreased or remitted in respect of any goods after the making of any contract for the sale or purchase of such goods without stipulation as to the payment of tax where tax was not chargeable at the time of the making of the contract, or for the sale or purchase of such goods tax-paid where tax was chargeable at that time,—

(a) if such imposition or increase so takes effect that the tax or increased tax, as the case may be, or any part of such tax is paid or is payable, the seller may add so much to the contract price as will be equivalent to the amount paid or payable in respect of such tax or increase of tax, and he shall be entitled to be paid and to sue for and recover such addition; and

(b) if such decrease or remission so takes effect that the decreased tax only, or no tax, as the case may be, is paid or is payable, the buyer may deduct so much from the contract price as will be equivalent to the decrease of tax or remitted tax, and he shall not be liable to pay, or be sued for, or in respect of, such deduction.

(2) The provisions of sub-section (1) apply to the following taxes, namely:—

(a) any duty of customs or excise on goods;

(b) any tax on the sale or purchase of goods.”.

STATEMENT OF OBJECTS AND REASONS

Subject to one exception, this Bill to implement the Eighth Report of the Law Commission on the Indian Sale of Goods Act, 1930, is identical with the Bill which was passed by the Rajya Sabha on 29th February, 1960, and which lapsed on the dissolution of the Second Lok Sabha as it could not be passed by that House before its dissolution.

The Law Commission recommended that the definition of "goods" in the Act be amplified so as to include electricity, water and gas. This was given effect to in the earlier Bill but after the Bill was passed by the Rajya Sabha, concern was expressed in some quarters as respects the amplification and the Judges of the Bombay High Court also expressed themselves against it. After further examination, it is felt that while on the one hand no great advantage may be gained by the proposed amplification as most of the provisions of the Sale of Goods Act can have no application to electricity, gas and water, on the other hand a good deal of confusion may be caused as the sale and distribution of these items is largely governed by special enactments. Accordingly this recommendation has not been given effect to in the present Bill.

NEW DELHI;

The 14th August, 1962.

B. MISRA,

Notes on clauses

Clause 3.—In sub-section (2) of section 13 of the Act, the words “or where the contract is for specific goods the property in which has passed to the buyer” have given rise to some difficulty. Property in specific goods in a deliverable state passes to the buyer when the contract is made. When there is a contract for sale of specific goods by sample, there would be an implied condition under sub-section (2) of section 17 of the Act that the bulk should correspond with the sample in quality. But in a case where the property has passed to the buyer when the contract is made (section 20) and the property is delivered subsequently but it does not correspond with the sample, an implied condition raised under sub-section (2) of section 17 will have to be treated as warranty under sub-section (2) of section 13. While the breach of a condition entitles a buyer to repudiate the contract altogether, the breach of a warranty entitles him to claim damages only. In order to resolve the conflict between sub-section (2) of section 13 and sub-section (2) of section 17, the Law Commission have recommended that the case of sale of specific goods by sample be taken out of sub-section (2) of section 13. This clause accordingly proposes to omit from that sub-section the words “or where the contract is for specific goods the property in which has passed to the buyer”.

Clause 4.—Sub-sections (2) and (3) of section 25 of the Act apply where goods are transported by sea. The Law Commission have recommended that since goods are frequently transported by rail, these sub-sections should be made applicable to railway receipts as well.

Clause 5.—Section 64A of the Act makes the necessary statutory provision in cases where a duty of customs or excise on any goods is imposed, increased or remitted after the making of any contract for the sale of the goods and the contract does not contain any provision regarding the payment of such duty. The Law Commission have recommended that on principle a similar provision should be made to deal with the case of imposition or change in the rate of a sale or purchase tax subsequent to the making of a contract for the sale of goods. Section 64A is being amended accordingly.

S. N. MUKERJEE,
Secretary.